

ORIGINAL

IN THE SUPREME COURT OF OHIO

13 AP 044

IN RE DISQUALIFICATION

: Supreme Court Case No.: _____

OF RUEHLMAN

GARY PRUIETT, ET AL.

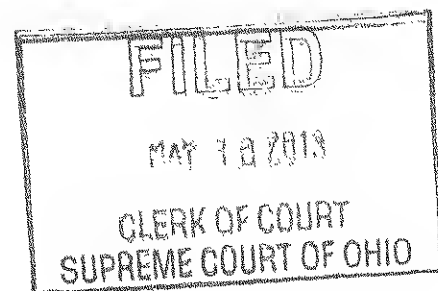
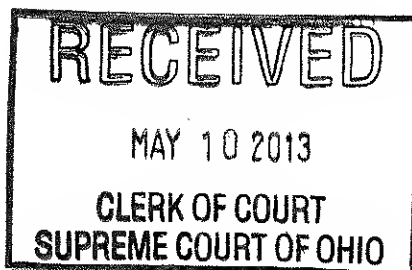
V.

VILLAGE OF ELMWOOD PLACE, et al.

HAMILTON COUNTY COMMON
PLEAS CASE NO: A1209235

AFFIDAVIT OF DISQUALIFICATION

Judd R. Uhl (89578)
MANNION & GRAY CO., LPA
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juhl@mansiongray.com
*Attorney for City of Elmwood Place and
Chief of Police William Peskin*



AFFIDAVIT OF DISQUALIFICATION

STATE OF KENTUCKY)
) SS:
COUNTY OF KENTON)

Comes now Affiant, Judd R. Uhl, Esq., who being first duly cautioned and sworn, hereby states the following:

1. That I am Judd R. Uhl, Esq., counsel for Village of Elmwood Place, Ohio (“Elmwood Place”), and William Peskin, Chief of Police for Elmwood Place.

2. That the purpose of this Affidavit is to seek disqualification of The Honorable Judge Robert P. Ruehlman from acting on any further proceedings in Case No. A1209235 pending in the Court of Common Pleas, Hamilton County, Ohio, wherein Elmwood Place and Chief Peskin are Defendants.

3. Elmwood Place was and is a political subdivision of the State of Ohio, in accordance with R.C. 2744.01(F). Chief Peskin is the duly appointed and acting Police Chief for the municipality.

4. The Hon. Robert P. Ruehlman was and is a judge presiding on the Hamilton County Court of Common Pleas.

5. Like many other towns and cities throughout Ohio, Elmwood Place formulated and enacted an automated speed enforcement ordinance designed to enforce the existing traffic ordinances through automated photographic equipment. Digital images of suspected violations are carefully examined by police officers before civil citations are issued, and a full and fair administrative review procedure has been furnished.

6. Since the automated speed enforcement ordinances went into operation in September 2012, public safety has been enhanced by the identification of over 100 speeding violations per day within the Village limits. See attached Affidavit of William Peskin, paragraph

2, attached as *Exhibit A*. Elmwood Place has also received substantial revenues from the citations that have been issued to the offenders, which fund a number of important services and benefits to the community. *Id.*, paragraph 2.

7. Approximately two months later on November 27, 2012, Elmwood Place and Chief Peskin were named as the only Defendants in a civil lawsuit that was filed on behalf of Gary Pruiett and others in the Hamilton County Court of Common Pleas and docketed under Case No. A1209235 (“Pruett lawsuit”). Judge Ruehlman as the then sitting equity judge when the case was filed was assigned to preside over the action.

8. The objective of the Pruiett lawsuit is a judicial determination that Elmwood Place’s automated speed enforcement ordinances violate the Ohio Constitution. A copy of the Complaint (without Exhibits) is attached as *Exhibit B*.

9. Ohio law has long recognized that legislative enactments enjoy a strong presumption of constitutionality. *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 473, 2007-Ohio-6948, 880 N.E.2d 420, 473, ¶ 25; *Ruther v. Kaiser*, 134 Ohio St.3d 408, 410, 2012-Ohio-5686, 983 N.E.2d 291, 294, ¶ 9.

10. This Court has previously determined that municipalities possess the constitutional authority to enact civil traffic camera enforcement ordinances. *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255. Due process challenges to such enactments have also been rejected. *Mendenhall v. Akron*, 374 Fed. Appx. 598, 2010 W.L. 1172474 (6th Cir. 2010); *Gardner v. Cleveland*, 656 F. Supp. 2d 751 (N.D. Ohio 2009); *Valaban v. Cleveland*, U.S. Dist., N.D. Ohio, Case No. 1:07-CV-1366, 2010 W.L. 481283 (Feb. 5, 2010).

11. Nevertheless, Judge Ruehlman determined in a six-page decision dated March 7, 2013, that Elmwood’s traffic camera enforcement system violates “due process guarantees” without citing to any specific Articles of the Ohio or United States Constitution . *Exhibit C*,

attached. Other than two U.S. Supreme Court decisions addressing federal due process requirements in general, no judicial authorities were cited in support of this determination. *Id.*

12. Furthermore, Judge Ruehlman imposed final “Judgment” in favor of the Pruiett Plaintiffs and court costs were imposed. *Exhibit C, p. 6.* Citing no authorities, Respondent further directed that “other reasonable expenses and attorney fees are to be assessed against the Defendants.” *Id., p. 6.*

13. In an earlier January 9th, 2013 evidentiary hearing, Judge Ruehlman asked questions of witnesses directly from the bench.

14. Chau M. Pham was a testifying witness on January 9, 2013. Mr. Pham had emigrated from Vietnam to the United States in 1975.

15. Judge Ruehlman asked Mr. Pham whether he was accurately summarizing Mr. Pham’s testimony by comparing to Elmwood’s Automated Speed Enforcement program to Communist North Vietnam in the 1970’s:

THE COURT: Okay. So you’re saying, summarizing, you’re saying your congregation, many of them stayed after the fall, like March of ’75?

THE WITNESS: March of ’75, Saigon.

THE COURT: The North Vietnamese attacked and took over South Vietnam.

THE WITNESS: Yeah.

THE COURT: And changed the name to Ho Chi Minh, of course, a lot of Vietnamese stuck there in the south.

THE WITNESS: Yes.

THE COURT: And so they lived under Communist regime for a number years and you’re saying they compared this - - they didn’t like - - the secret police was watching always on cameras and they were always being watched by government and that’s what they are comparing this to.

THE WITNESS: Yeah.

THE COURT: - - and it just bothers them, is that what you are saying? Just to summarize?

THE WITNESS: Yeah. And also there's another thought maybe we are facing to where prejudice or because all cam nearby the church (*sic*).

(January 9th, 2012 pp. 10-11) attached as *Exhibit D*.

16. Judge Ruehlman also asked Mr. Pham whether he believed the program was a form of discrimination against Vietnamese people. *Id.*

17. At another hearing on March 12th, 2013 (after Judge Ruehlman had already ruled that Elmwood's ordinance was unconstitutional), Judge Ruehlman stated that Elmwood's conduct was "outrageous" and that if (Elmwood) violates my Order, "it's going to be a chauffer service to the Justice Center." (See March 12th, 2013, hearing, p. 16, attached as *Exhibit E*)

18. In addition to the comments and questions from the bench, in his actual written 6-page opinion granting Plaintiff's Motion, Judge Ruehlman used extremely pejorative and unnecessary language directed at Elmwood Place and Chief Peskin, e.g. "sham!" "game" "nothing more than a high-tech game of **3 CARD MONTY**" "scam" "entire case against the motorist is stacked" and "Elmwood Place has another scheme up its sleeve".

19. Judge Ruehlman has ordered that: "A permanent injunction is granted to the Plaintiffs prohibiting further enforcement of the ordinance, by the Defendants." *Id.*, p. 6.

20. That prior to the trial court's injunction prohibiting enforcement of Elmwood Place's ordinances, the speed cameras were generating approximately one hundred three (103) Notices of Liability each day at \$105.00 per violation. This represents potential lost revenues to Elmwood Place of almost \$325,000.00 per month. Elmwood Place has a population of approximately 2200 residents. *Exhibit A, paragraph 2, attached.*

21, Nevertheless, Judge Ruehlman ignored the clear and substantial harm to Elmwood Place that would be caused by the injunction and rather than addressing it in a fair and impartial manner, ordered that the surety be set at the nominal amount of \$1.00.

22. That since the trial court's injunction, Chief Peskin has observed that a high percentage of motorists have returned to traveling at excessive and unlawful rates of speed while traveling through Elmwood Place on the previously monitored roadways, including the school zone on Vine Street across from Elmwood Place Elementary School. *Id.*, paragraph 3.

23. That Judge Ruehlman's injunction has created a material safety concern with the traffic situation and Elmwood Place does not have sufficient police manpower to adequately patrol the areas previously monitored by the speed cameras. *Id.*, paragraph 4.

24. That Judge Ruehlman's words and actions create an overwhelming appearance of bias and prejudice toward Elmwood Place and Chief Peskin and convey the impression that the Judge has developed a hostile feeling or spirit of ill will and that the Judge has reached a fixed anticipatory judgment that will prevent him from hearing the balance of the case with an open state of mind governed by the law and the facts.

25. The Pruiett Plaintiffs have currently pending a Motion for Leave to File First Amended Class Action Complaint and Motion for Contempt, which are the subject of the next scheduled hearing in the proceeding set for 2:00pm on June 4, 2013.

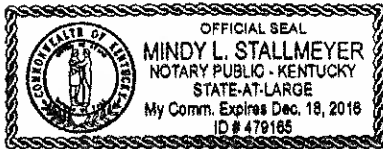
26. Elmwood Place and Chief Peskin harbor serious doubts about the judge's impartiality.


Further Affiant sayeth naught.



Judd R. Uhl, Esq.
Counsel for Village of Elmwood Place, Ohio
and William Peskin, Chief of Police

SWORN AND SUBSCRIBED BEFORE ME THIS 8th day of May, 2013.



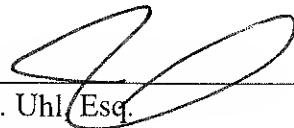

Notary Public
My Commission Expires: 12/18/16

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Affidavit of Disqualification was served by regular U.S. mail, this Y day of May, 2013, upon the following:

The Honorable Robert P. Ruehlman
Hamilton County Courthouse Room 300
1000 Main Street
Cincinnati, Ohio 45202

Michael K. Allen, Esq.
810 Sycamore Street
Cincinnati, OH 45202



Judd R. Uhl, Esq.

EXHIBIT A

AFFIDAVIT OF WILLIAM PESKIN

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

Comes now Affiant, William Peskin, who being first duly cautioned and sworn, hereby states the following:


1. That I am William Peskin, Chief of Police for the Village of Elmwood Place, Ohio ("Elmwood Place"), Elmwood Place Police Department, 6118 Vine Street, Elmwood Place, Ohio 45216.

2. That prior to the trial court's injunction prohibiting enforcement of Elmwood Place's automated speed enforcement ordinances, commonly known as speed cameras, the speed camera ordinances were generating approximately one hundred three (103) Notices of Liability each day at \$105.00 per violation. This represents potential lost revenues to Elmwood Place of almost \$325,000.00 per month. Elmwood Place has a population of approximately 2200 residents.

3. That since the trial court's injunction, I have observed that a high percentage of motorists have returned to traveling at excessive and unlawful rates of speed while traveling through Elmwood Place on the previously monitored roadways, including the school zone on Vine Street across from Elmwood Place Elementary School.

4. That the trial court's injunction has created a material safety concern with the traffic situation and Elmwood Place does not have sufficient police manpower to adequately patrol the areas previously monitored by the speed cameras.

Further Affiant sayeth naught.



William Peskin, Chief of Police
Village of Elmwood Place, Ohio

SWORN AND SUBSCRIBED BEFORE ME THIS 15th day of April, 2013.



SHEILA M. DORNBUSCH
Notary Public, State of Ohio
My Comm. Expires 5-14-16

Sheila M. Dornbusch
Notary Public
My Commission Expires 5-14-16

EXHIBIT B

ORIGINAL

IN THE COURT OF COMMON PLEAS
CIVIL DIVISION
HAMILTON COUNTY, OHIO

GARY PRUIETT
7298 Shady Hollow
West Chester, Ohio 45069

and

LINDA PRUIETT
7298 Shady Hollow
West Chester, Ohio 45069

and

JANNIA WARREN
2033 Innes
Cincinnati, Ohio 45224

and

MARJA FERNANDEZ
36 Camargo Canyon
Cincinnati, Ohio 45253

and

CRAIG COBURN
7983 Bear Creek
Cincinnati, Ohio 45241

and

THERESA E. EPPSTEIN
509 Lombardy Street
Cincinnati, Ohio 45216

and

OUR LADY OF LAVANG VIETNAMESE
CATHOLIC COMMUNITY CHURCH
c/o Rev. Chau M. Pham, S.V.D.
314 Township Avenue
Cincinnati, Ohio 45216

Case No.

A 1 2 0 9 2 3 5

Judge:

COMPLAINT FOR DECLARATORY
JUDGEMENT AND INJUNCTIVE
RELIEF(INCLUDING TEMPORARY
RESTRAINING ORDER)



D100095064

FILED

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH
2012 NOV 29 P 1:56

A handwritten signature in black ink, consisting of a large, stylized 'Z' or 'G' shape followed by a horizontal line.

and

REV. CHAU M. PHAM, S.V.D.
314 Township Avenue
Cincinnati, Ohio 45216

and

DAVID DOWNS
5560 Vine Street
Cincinnati, Ohio 45216

and

ST. BERNARD POLISHING COMPANY
c/o David Downs
5560 Vine Street
Cincinnati, Ohio 45216

PLAINTIFFS

v.

VILLAGE OF ELMWOOD PLACE,
6118 Vine Street
Elmwood Place, Ohio 45216

and

WILLIAM PESKIN, POLICE CHIEF,
VILLAGE OF ELMWOOD PLACE,
6118 Vine Street
Elmwood Place, Ohio 45216,

DEFENDANTS

INTRODUCTION

1. Plaintiffs bring this action for a declaratory judgment, temporary restraining order and injunctive relief. This case arises out of the operation of the Automated Speed Enforcement Program in the Village of Elmwood Place. The Automated Speed Enforcement Program was

established by Ordinance 9-12 adopted by Village Council on July 10, 2012. The Ordinance is invalid and unenforceable because the municipality failed to comply with the statutory requirements.

PARTIES

2. The following Plaintiffs bring this Complaint and have completed sworn affidavits attached hereto verifying the allegations herein:

- a. Plaintiff Gary Pruiett is an Ohio resident with a residence at 7298 Shady Hollow, West Chester, Ohio 45069.
- b. Plaintiff Linda Pruiett is an Ohio resident with a residence at 7298 Shady Hollow, West Chester, Ohio 45069.
- c. Plaintiff Jannia Warren is an Ohio resident with a residence at 2033 Innes Avenue, Cincinnati, Ohio 45224.
- d. Plaintiff Marja Fernandez is an Ohio resident with a residence at 36 Camargo Canyon, Cincinnati, Ohio 45253.
- e. Plaintiff Craig Coburn is an Ohio resident with a residence at 7983 Bear Creek, Cincinnati, Ohio 45249.
- f. Plaintiff Theresa E. Eppstein is an Ohio resident with a residence at 509 Lombardy Street, Cincinnati, Ohio 45216.
- g. Plaintiff Our Lady of Lavang Vietnamese Catholic Community Church is a place of worship located in Elmwood Place, Ohio at 314 Township Avenue, Cincinnati, Ohio 45216.

- h. Plaintiff Rev. Chau M. Pham, S.V.D. is employed by Our Lady of Lavang Vietnamese Catholic Community Church at 314 Township Avenue, Cincinnati, Ohio 45216.
 - i. Plaintiff David Downs is an Ohio resident and business owner with a business located at 5560 Vine Street, Cincinnati, Ohio 45216.
 - j. Plaintiff St. Bernard Polishing Company is a business located at 5560 Vine Street, Cincinnati, Ohio 45216.
- 3. Defendant Village of Elmwood Place is an Ohio municipality with a principal location at 6118 Vine Street, Elmwood Place, Ohio 45216.
 - 4. Defendant William Peskin is the Police Chief of Village Of Elmwood Place. He has a principal place of business at 6118 Vine Street, Elmwood Place, Ohio 45216.
 - a. Defendant Peskin is sued in his official capacity.
 - b. Defendant Peskin is responsible for the administering and operating the Automated Speed Enforcement Program.

JURISDICTION AND VENUE

- 5. Pursuant to R.C. 2727.01 et seq, this Courts is authorized to grant the injunctive relief sought.
- 6. Pursuant to R.C. 2727.01, this Court is authorized to declare rights, status, and other legal relations whether or not further relief is or could be claimed.
- 7. Venue is appropriate in this Court, and this court has jurisdiction over this matter in that a substantial portion of the events that form the basis of this Complaint occurred in Hamilton County.

8. Plaintiffs Pruitt, Warren, Fernandez, Eppstein, Pham, Downs and Coburn are currently facing civil penalties as a result of the operation of the automated traffic enforcement system and have requested an administrative hearing. (See Affidavits filed herein).
9. Plaintiff Linda Pruiett is the wife of Plaintiff Gary Pruiett, and may be harmed by revelation of confidential information protected by privilege. (See Affidavits filed herein).
10. Plaintiff St. Bernard Polishing Company has lost business as a result of the operation of the automated traffic enforcement system. (See Affidavit filed herein).
11. Plaintiff Our Lady of Lavang Vietnamese Catholic Community Church has lost parishioners as a result of the operation of the automated traffic enforcement system. (See Affidavit filed herein).

FACTS

12. On July 10, 2012, the Village Council of Elmwood Village passed Ordinance 9-12 (the "Ordinance," attached as Exhibit 1).
13. The Ordinance created the Automated Speed Enforcement Program.

The Minutes of the July 10, 2012 Council Meeting provide:

CONSIDERATION AND PASSAGE OF ORDINANCES AND RESOLUTION:

ORDINANCE 09-12: AN ORDINANCE ADOPTING AN AUTOMATED SPEED ENFORCEMENT PROGRAM AND ESTABLISHING CIVIL PENALTIES FOR AUTOMATED SPEED VIOLATIONS, SUPPLEMENTING THE CODIFIED ORDINANCES OF THE VILLAGE OF ELMWOOD PLACE, OHIO BY ADDING THERETO NEW CHAPTER SEC. 77 TO PROVIDE FOR THE IMPLEMENTATION OF SAID PROGRAM.

Mr. Mathews moved to waive a second and third reading. Mrs. Wiles seconded the motion.

Motion carried 6-0

Mr. Robertson moved to accept Ordinance 09-12 as read. Mr. Mathews seconded the motion.

Motion carried 6-0.

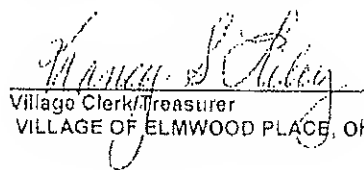
Passed 7/10/12,

A copy of the Minutes is attached as Exhibit 2.

14. The Ordinance added Section 77 to the Village's Codified Ordinances for the implementation of the Automated Speed Enforcement Program.
15. The Ordinance provides that "the owner of a vehicle shall be liable for a penalty imposed" for speeding. Section 77.03(a). The Ordinance provides that the recorded images produced by the automated speed monitoring system are *prima facie* evidence of a violation. Section 77.03(d).
16. The Ordinance assumes that the owner of the motor vehicle was operating the motor vehicle at the time of the alleged violation. Section 77.04(d) ("It is *prima facie* evidence that the person registered as the owner of the vehicle . . . was operating the vehicle at the time of the offense.").
17. Ordinance No. 9-12 does not have a certification of the times when and the places where, the ordinance is said to have been published. The certificate provides:

CERTIFICATE

I, Nancy S. Riley, Village Clerk of the Village of Elmwood Place, Ohio, State of Ohio, hereby certify that the foregoing Ordinance No. 9-12 was duly published as provided by Section 30.13 of the Codified Ordinances of the Village of Elmwood Place, Ohio, by posting true copies of same in the most public places designated by Council.


Village Clerk/Treasurer
VILLAGE OF ELMWOOD PLACE, OHIO

18. On July 14, 2012, the Elmwood Place entered into a service agreement with Optotraffic, LLC (the "Service Agreement," attached as Exhibit 3). Optotraffic is a Maryland for profit corporation that provides automated speed and traffic enforcement systems to local governments.

19. The Service Agreement provides the Optotraffic would operate the Automated Speed Enforcement Program for the Elmwood Village. The operation of Automated Speed Enforcement Program by Optotraffic includes:

- Installation of cameras and equipment to measure speed and produce images of vehicles allegedly violating speed limits;
- Obtaining from BMV records the identity of the owner of vehicles alleged to have violated speed limits;
- Printing and mailing citations, or Notices of Liability, to the owners of vehicles alleged to have violated speed limits;
- Operation of a phone number for recipients of citations to make inquiries and receive information;
- Retention of a collection service to pursue any unpaid fines and fees.

20. In exchange for providing this service to Elmwood Place, Optotraffic receives 40% of all revenue resulting from payments of citations and related fees.

21. Elmwood Place recently passed Ordinance No. 12-12 which announced that anyone requesting an “administrative hearing” will be assessed a \$25 fee, even when that request was made before the law’s passage. A copy of Ordinance 12-12 is attached as “Exhibit 4.”

22. Ordinance No. 12-12, like Ordinance No. 9-12, does not have a certification of the times when and the places where, the ordinance is said to have been published. The certificate provides:

CERTIFICATE

I, Nancy Riley, Village Clerk of the Village of Elmwood Place, Ohio, State of Ohio, hereby certify that the foregoing Ordinance No. 12-12 was duly published as provided by Section 77.07(d) of the Codified Ordinances of the Village of Elmwood Place, Ohio, by

Nancy S. Riley
Village Clerk

VILLAGE OF ELMWOOD PLACE, OHIO

23. Despite R.C. 731.20's proclamation that "no ordinance shall take effect until the expiration of ten days after the first publication of such notice," Ordinance No. 12-12 is said to have immediate and even retroactive effect.
24. Elmwood Place began operation of the Automated Speed Enforcement Program on September 1, 2012:
25. On information and belief, speed enforcement signs were not originally placed in view of motorists entering the jurisdictional boundaries of Elmwood Place. The signs are now in the correct locations.
26. One 'speed camera' has been placed in a school zone on Vine Street. A second 'speed camera' has been placed in a residential neighborhood.
27. The hours of operation for enforcement are twenty four hours per day, seven days per week throughout the year.
28. Vehicles traveling over the posted speed limit are subject to enforcement action. This action is based on evidence captured by the automated speed enforcement system.
29. The owner of a vehicle subject to enforcement action receives a Notice of Liability. The Notice of Liability is a civil, not a criminal, proceeding.

30. On information and belief, Defendant Peskin has stated that the Elmwood Police will not issue Notices of Liability for drivers who are operating a motor vehicle less than five minutes over the speed limit.
- a. On information and belief, a number of Notices of Liability have been issued for drivers traveling less than five miles over the speed limit, including tickets for only 1 mile over the speed limit.
 - b. The Elmwood Police web page indicates that although the Elmwood Police Department does not anticipate the threshold to fall below 5 MPH over the posted speed limit, "Enforcement thresholds may be adjusted at any time based on the needs of the community, and at the discretion of the Chief of Police."
31. Notices of Liability are being mailed to the registered owners of vehicles after law enforcement verification and approval.
- a. Plaintiffs Gary Pruiett, Warren, Fernandez, Coburn, Eppstein, Pham and Downs have received notices of liability pursuant to Exhibit 5 attached hereto.
32. The Notice of Liability explains how to pay the penalty and how to request a hearing.
33. The Village of Elmwood Place has established certain administrative procedures to adjudicate claims by the recipients of Notices of Liability that the recipient is not liable.
34. The administrative procedures established by Ordinance are not consistent with the rules governing Mayor's Courts.
35. The administrative procedures established by Ordinance are not consistent with the rules of civil procedure or the rules of evidence.
36. The procedures set forth in the Ordinance do not provide for proper service of the Notices of Violation, do not permit discovery, and do not permit parties to subpoena witnesses.

37. The procedures set forth in the Ordinance permit the admission of hearsay evidence in violation and could require a person to provide testimony against his or her spouse.
38. The procedures set forth in the Ordinance do not permit a person who receives a notice of violation and who claims to not be driving the car is not permitted to merely convince the hearing officer that he or she was not the driver. Instead, the owner must provide the name and address of the driver of the vehicle. No other form of evidence can establish the affirmative defense.
39. The civil penalty is \$105 and it does not involve points on a driver's record. The fine is enforced like other civil judgments.
40. Elmwood Village has stated that it may use collection services and report non-payment to credit agencies.
41. On or about October 3, 2012, Tim Ayers, spokesperson for Optotrafic told FOX19 that if drivers fail to pay the fine and subsequent late fees, drivers will ultimately be turned over to collection agencies.
42. On information and belief, the primary motivation for the Automated Speed Enforcement Program is to generate revenue. A Elmwood Place Village Council Member, Jerald Robertson, told Fox 19 for a October 3, 2012 report: "There's no getting around it, the principal drive behind this is to generate income. We're financially in very bad shape."
- a. An October 10, 2012 article in the Cincinnati Enquirer suggested that Elmwood Place would receive annually over \$400,000 from the operation of the Automated Speed Enforcement Program.
 - b. In an October 18, 2012 interview with Fox 19, Defendant Peskin stated that over 6,600 notices of liability have been mailed out and roughly 400 appeals have been

filed. As of that date, defendant Elmwood Place had received \$17,000 from the Automated Speed Enforcement Program.

- c. In a November 14, 2012, story, Channel 12 reported that the Mayor of Elmwood Place said that the village has issued more than 13,000 notices of liability and collected \$245,000.

43. Individuals and businesses in Elmwood Place have suffered damages as a result of the operation of at the Automated Speed Enforcement Program.

- a. Plaintiff St. Bernard Polishing Company has a parking lot that is adjacent to the Village of Elmwood Place and customers have indicated they will no longer patronize this business due to the Automated Speed Enforcement Program and Plaintiff has suffered lost business and damages as a result thereof.

- b. News reports, such as a November 14, 2012 report by Channel 5, have quoted individuals who said that they are no longer driving through Elmwood Place and are boycotting Elmwood Place businesses. The news report also said that residents are bypassing the business district.

44. Individuals have suffered damages because they are unwilling to risk receiving notices of liability and, therefore, are not entering Elmwood.

- a. Plaintiff Our Lady of Lavang Vietnamese Catholic Community Church has lost about one-third of its parishioners as parishioners are unwilling to risk receiving notices of liability and therefore, are not entering Elmwood.

45. On information and belief, recipients of Notices of Violation have requested brief continuances of administrative hearings so that statutory and constitutional defenses may be investigated and properly asserted.

COUNT I
(DECLARATORY JUDGEMENT)

46. The Plaintiff repeats the allegations of paragraphs 1-45, as if fully set forth herein.
47. There is a dispute between the parties about whether the Ordinance is invalid and unenforceable because Elmwood Village did not comply with the publication requirements under Ohio law.
48. Ohio Law, R.C. §731.20 provides that "A succinct summary of ordinances of a general nature or providing for improvements shall be published . . . before going into operation."
49. Ohio Law, R.C. §731.25 provides that in municipalities "in which no newspaper is generally circulated" publication of summaries of ordinances and resolutions "shall be accomplished by posting copies in not less than five of the most public places in the municipal corporation, as determined by the legislative authority, for a period of not less than fifteen days prior to the effective date thereof."
50. Ohio Law, R.C. §731.25 further provides that "Where such publication is by posting, the clerk shall make a certificate as to such posting, and as to the times when and the places where such posting is done . . . and such certificate shall be prima-facie evidence that the copies were posted as required.
51. The Certificate on Ordinance 9-12 signed by the Village Clerk, Elmwood Village does not comply with R.C. §731.25 because it does not include the times when, and the places where, the Ordinance was posted.
52. The Certificate on Ordinance 9-12 signed by the Village Clerk, Elmwood Village does not comply with R.C. §731.25 because it does not include a certification that the Ordinance was posted for fifteen days.

53. Pursuant to R.C. §731.26, the failure of publication is absolute bar to the enforcement of a municipal ordinance. This statute provides: "It is a sufficient defense to any suit or prosecution under an ordinance, to show that no publication or posting was made as required by sections 731.21 to 731.25, inclusive, of the Revised Code."
54. Pursuant to R.C. §2720.02, the plaintiffs are entitled to a declaration that the ordinance in invalid and unenforceable.

COUNT II
(DECLARATORY JUDGEMENT – CHAPTER 1905)

55. The Plaintiff repeats the allegations of paragraphs 1-54, as if fully set forth herein.
56. R.C. 1905.01 *et seq.* authorizes the Village of Elmwood Place to establish a Mayor's Court to hear and determine any prosecution for the violation of an ordinance of the municipal corporation.
57. The Village of Elmwood Place may only exercise jurisdiction to "hear and decide" a case pursuant to Chapter 1905 of the Revised Code. As a result, all of the administrative hearings on Notices of Liability must be conducted before a Mayor's Court.
58. Chapter 1905 of the Revised Code Authorizes Mayor's Courts to hold only "trials."
59. The Village of Elmwood Place has violated Chapter 1905 of the Ohio Revised Code by instituting separate administrative procedure to review Notices of Violation.
60. The Village of Elmwood Place has violated Chapter 195 because In all proceedings in Mayor's Courts, the rules applicable in other Ohio trial courts must be applied, including the Rules of Evidence and the Rules of Civil Procedure.
61. The procedures used by the Village of Elmwood Place violate the Ohio Rules of Civil Procedure in a number of ways, including:

- a. The procedures do not provide for proper service of the Notices of Violation as set forth in Rule 4.1.
 - b. The procedures do not permit for discovery as set forth in Rule 26 *et seq.*
 - c. The procedures do not permit parties to subpoena witnesses as set forth in Rule 45.
62. The procedures used by the Village of Elmwood Place violate the Rules of Evidence in a number of ways, including:
- a. The admission of hearsay evidence in violation of Rule 801.
 - b. The requirement that a person who was not driving a vehicle, but who has knowledge that his or her spouse was operating the vehicle provide testimony against his or her spouse in violation of Rule 601 and R.C. §2317.02.
63. Pursuant to R.C. §2720.02, the plaintiffs are entitled to a declaration that the ordinance in invalid and unenforceable.

**COUNT III
(DECLARATORY JUDGEMENT VIOLATION OF OHIO CONSTITUTION)**

64. The Plaintiff repeats the allegations of paragraphs 1-63, as if fully set forth herein.
65. Section 16, Article I, Ohio Constitution, guarantee that every person injured in his lands, goods, person or reputation shall have remedy by "due course of law."
66. The administrative procedures used by the Village of Elmwood Place violate the Ohio Constitution's guarantee of "due course of law" by not providing an opportunity for those who receive a Notice of Violation to be heard at a meaningful time and in a meaningful manner.
67. The administrative procedures used by the Village of Elmwood Place violate the Ohio Constitution's guarantee of "due course of law" because:

- a. The procedures used by the Village of Elmwood Place do not comply with the Ohio Rules of Civil Procedure.
- b. The procedures used by the Village of Elmwood Place do not comply with the Ohio Rules of Evidence.
- c. The procedures used by the Village of Elmwood Place do not permit a person who receives a Notice of Violation to: (i) conduct discovery; (ii) subpoena witnesses.
- d. The procedures used by the Village of Elmwood Place permit a person to be found liable based on unsubstantiated hearsay evidence.
- e. The procedures used by the Village of Elmwood Place may require a person to either admit to liability or provide the identity of a liable person, including a spouse in violation of spousal immunity.
- f. The procedures used by the Village of Elmwood Place do not adequately permit the recipient of a Notice of Violation to assert affirmative defenses, such as: (i) compliance with the requirement in Chapter 731 of the Ohio Revised Code that municipalities publish its ordinances in a particular manner and for a particular time before those ordinances may be given effect; and (ii) compliance with the requirement of R.C. §4511.094(B)(1) that signs be erected to inform inbound traffic that the local authority utilizes traffic law photo-monitoring devices to enforce traffic laws.
- g. The procedures used by the Village of Elmwood Place assess a \$25 fee to vehicle owners who have requested a hearing without assurances that the fee will be waived or not assessed in the appeal is successful.

- h. The procedures used by the Village of Elmwood Place do not permit the granting of reasonable continuances to counsel for the recipients of Notices of Violations, so that defenses may be adequately investigated and prepared.
68. Pursuant to R.C. §2720.02, the plaintiffs are entitled to a declaration that the ordinance is invalid and unenforceable.

**COUNT IV
(Injunctive Relief)**

69. The Plaintiff repeats the allegations of paragraphs 1-68 as if fully set forth herein.
70. Pursuant to R.C. §731.26, Ordinances 9-12 and 12-12 are invalid and unenforceable.
71. The continued operation of the Automated Speed Enforcement Program is causing substantial, immediate, and continuing damage to the plaintiff:
- a. Plaintiffs the Pruietts, Warren, Fernandez, Coburn, Eppstein, Pham and Downs may suffer damage to their credit report from threatened collection actions by Elmwood Place pursuing collection actions and possibly reporting non-payments to credit agencies.
 - b. Plaintiff St. Bernard Polishing Company has suffered a loss of business since the Automated Speed Enforcement Program and this loss of business is attributed to the Automated Speed Enforcement Program.
 - c. Plaintiff Our Lady of Lavang Vietnamese Catholic Community Church has parishioners who are reluctant to travel into Elmwood Place for church services out of fear of receiving a Notice of Liability.
72. The Plaintiffs are entitled to a Temporary Restraining Order, and, following a hearing, an Injunction from this Court prohibiting the continued enforcement of the Ordinance.

Wherefore, Plaintiff seeks the following relief from the Court:

- On Counts I-III, Judgment in favor of the Plaintiffs that the Ordinance is invalid and unenforceable.
- On Count IV, a Temporary Restraining Order, and, following a hearing, an Injunction prohibiting further enforcement of the Ordinance.
- Court costs, other reasonable expenses incurred in maintaining this action, including reasonable attorney's fees.

Respectfully submitted,



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EXHIBIT C

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JUDGE ROBERT P. RUEHLMAN
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

GARY PRUIETT, et al.
Plaintiffs

Case Number: A1209235

Judge Robert P. Ruehlman

v.

VILLAGE OF ELMWOOD, et al.
Defendants



D101235334

DECISION

ENTERED

MAR 07 2013

On July 10th, 2012 The Village Counsel of Elmwood Place, a small village located in Hamilton County, Ohio passed ordinance 9-12 (The Ordinance). This ordinance created The Automated Speed Enforcement Program. The ordinance added Section 77 to the Village's codified ordinances for the implementation of the Automated Speed Enforcement Program. The ordinance provides that the "owner of a vehicle shall be liable for a penalty imposed for speeding." The ordinance also provides that the recorded images produced by the Automated Speed Enforcement Program are prima facie evidence of a violation. In addition, the ordinance assumes that the owner of the motor vehicle was operating the vehicle at the time of the offense.

On July 14th, 2012, the Village of Elmwood Place entered into a service agreement with Optotrafic, LLC (service agreement), Optotrafic is a Maryland for profit Corporation that provides automated speed and traffic enforcement systems to local governments. The service agreement provides that Optotrafic would operate the Automated Speed Enforcement Program

for the Village of Elmwood Place. The operation of the Automated Speed Enforcement Program by Optotraffic includes:

- Installation of cameras and equipment to measure speed and produce images of vehicles allegedly violating speed limits.
- Obtaining from BMV records the identity of the owner of vehicles alleged to have violated the speed limits.
- Printing and mailing citations, or Notices of Liability, to the owners of vehicles alleged to have violated speed limits.
- Operation of a phone number for recipients of citations to make inquiries and receive information.
- Retention of a collection system to pursue any imposed fines and fees.

In exchange for providing this service to Elmwood Place, Optotraffic receives 40% of all revenues resulting from payments of citations and related fees.

Elmwood Place recently passed Ordinance No. 12-12, which announced that anyone requesting an “Administrative Hearing” will be assessed a \$25.00 fee, even when that request was made before the law’s passage.

Elmwood Place began operation of the Automated Speed Enforcement Program on September 1, 2012. One speed camera was placed in a school zone on Vine Street and a second speed camera was placed in a residential neighborhood. The hours of operation are twenty-four hours per day, seven days per week throughout the year. Vehicles traveling over the posted limit are subject to enforcement action. This action is based on evidence captured by the Automated

Speed Enforcement Program. The owner of a vehicle subject to enforcement action receives a Notice of Liability. The Notice of Liability is a Civil, not a Criminal, proceeding.

The Civil penalty is \$105.00 and it does not involve points on a driver's license or on a driver's record. The fine is enforced like Civil Judgments. Elmwood Place stated that it may use collection services, report non-payment to credit agencies and deprive owners of their vehicles.

Thousands of these tickets have been issued since September 1, 2012 and thousands of Notices of Liability have been issued. Of the money collected through this program, 40 percent of the revenue goes to Optotraffic and 60 percent stays in the Village of Elmwood Place. With approximately 115 Notices of Liability being issued per day, at \$105.00 per violation, Elmwood's Automated Speed Enforcement Program is capable of generating approximately \$362,250.00 per month. Over a six month period, Elmwood Place is capable of collection over 2 million dollars.

Individuals and businesses in Elmwood Place have suffered damages as a result of the operation of the Automated Speed Enforcement Program. Businesses have lost customers who now refuse to drive through Elmwood. Churches have lost members who are frightened to come to Elmwood and individuals who have received notices were harmed because they were unable to defend themselves against the charges brought against them.

ISSUES:

PUBLICATION AND POSTING

Plaintiffs assert that Elmwood Place violated the publication and posting requirements of the Ohio Revised Code when it passed the Ordinance established its Automated Speed Enforcement Program. The Court does not need to decide this issue because the case will be resolved under the issue of Due Process.

DUE PROCESS

The Plaintiffs assert that the ordinance violates the Ohio Constitution. The Constitution of the State of Ohio guarantees that every person injured in his lands, goods or personal reputation shall have remedy by “due course of law”. In other words, a person facing civil penalties must be afforded the opportunity to defend, enforce or protect their rights through presentation of their own evidence, confrontation and cross-examination of adverse witnesses, and oral argument. *Goldberg v. Kelly*, 397 US 254 (1970). Moreover, the terms, “due course of law” under the Ohio Constitution and “due process of law” under the United States Constitution are interpreted identically. *Adler v. Whitbeck*, 44 Ohio State 539 (1886).

DECISION

The Court finds that the ordinance fails to provide due process guarantees to any person receiving a Notice of Liability, from The Village of Elmwood Place.

Revised Code 4511.094 requires that traffic law photo-monitoring devices to enforce traffic laws cannot be used in a village, unless a sign is erected within that village, warning motorists that such a monitoring device is operating. The Chief of the Elmwood Place Police Department testified that it was possible for a motorist to enter the village and go through a speed enforcement area without ever passing a warning sign.

Furthermore, when a speed monitoring device records a violation, a motorist is mailed a Notice of Liability. The violation is based on a report and a photograph from the speed monitoring unit. The report contains the speed of the vehicle indicating that the vehicle was traveling faster than the speed limit. The photograph shows the car and its license plate number. The owner of the vehicle is then sent a Notice of Liability and is told to pay a civil penalty of \$105.00. If the owner of the vehicle wants to contest the liability, he or she must pay \$25.00 to the Village of Elmwood and request a hearing before a hearing officer and there is no assurance that the fee will be returned if the appeal is successful. However, the hearing is nothing more than a sham!

The so called witness for Elmwood Place testifies from a report produced by the company that owns the speed monitoring unit. This witness has no personal knowledge of the speeding violation and therefore, their testimony is based solely on hearsay. The accused motorist has no ability to cross-examine the witness because the witness was not present when

the violation occurred. There is no opportunity to obtain any discovery about the device or to subpoena any witnesses that may have knowledge of the device. In fact, the device is calibrated once a year; even though it may have been subjected to 12 months of varying amounts of rain, snow, sun, storms, ice, wind and lightning. Moreover, the device was not calibrated by a certified Police Officer, but rather it was calibrated by Optotraffic, the corporation that owns the device. Remember, Optotraffic has a financial stake in this game. I used the term "game" because Elmwood Place is engaged in nothing more than a high-tech game of **3 CARD MONTY**. It is a scam that the motorists can't win. The entire case against the motorist is stacked because the speed monitoring device is calibrated and controlled by Optotraffic. Remember, Optotraffic had already received approximately \$500,000.00 at the time of the January 9th, 2013 hearing, before this court.

To compound this total disregard for due process, Elmwood Place has another scheme up its sleeve. If a motorist tries to convince a hearing officer that he or she was not the driver of the offending vehicle, the ordinance requires that the owner making such a claim provide the name and address of the driver of the vehicle. If the driver was the owner's spouse, the ordinance requires the owner to testify against his or her spouse, in violation of the spousal immunity statute Revised Code 2917.02 (D).

The Court renders Judgment in favor of the Plaintiffs and finds that the ordinance is invalid and unenforceable. A permanent injunction is granted to the Plaintiffs prohibiting further enforcement of the ordinance, by the Defendants.

Court costs, other reasonable expenses and attorney fees are to be assessed against the Defendants.

EXHIBIT D

1 society because in that society people always
2 were watched by Communist secret agency.

3 THE COURT: Secret police?

4 THE WITNESS: Yes.

5 A. So now they came here, they said
6 it's like we are living in the same situation
7 that way.

8 THE COURT: Okay. So you're
9 saying, summarizing, you're saying your
10 congregation, many of them stayed after
11 the fall, like March of '75?

12 THE WITNESS: March of '75, Saigon.

13 THE COURT: The North Vietnamese
14 attacked and took over South Vietnam.

15 THE WITNESS: Yeah.

16 THE COURT: And changed the name to
17 Ho Chi Minh, of course, a lot of
18 Vietnamese stuck there in the south.

19 THE WITNESS: Yes.

20 THE COURT: And so they lived under
21 Communist regime for a number years and
22 you're saying they compared this -- they
23 didn't like -- the secret police was
24 watching always on cameras and they were
25 always being watched by government and

1 that's what they are comparing this to --

2 THE WITNESS: Yeah.

3 THE COURT: -- and it just bothers
4 them, is that what you are saying? Just
5 to summarize?

6 THE WITNESS: Yeah. And also
7 there's another thought maybe we are
8 facing to where prejudice or because all
9 cam nearby the church.

10 THE COURT: Okay. So you are also
11 saying that you feel that because the
12 camera is near the church that your
13 congregation feels it's a form of
14 discrimination against Vietnamese people
15 because it was right next to your church?
16 Is that what you're saying? Trying to
17 summarize.

18 THE WITNESS: Yeah, exactly.

19 MR. ENGEL: Okay. Thank you, Your
20 Honor.

21 THE COURT: All right. Do you want
22 to cross-examine?

23 MS. VIZEDOM: Yes.

24 THE COURT: She has got some
25 questions, Reverend, she wants to ask

EXHIBIT E

1 out to visit Elmwood Place. I thought it
2 was a nice idea to have this little
3 discussion. That avoids problems because
4 if you violate my order, it's going to be
5 a chauffeur service to the Justice
6 Center.

7 MR. ALLEN: Just one other thing,
8 Judge, I don't mean to nitpick, would it
9 cover Elmwood's agents as well, meaning
10 Optotraffic, in the ruling?

11 THE COURT: Well, Optotraffic,
12 obviously, operates the Elmwood Place.
13 I'm telling Elmwood Place they can't
14 operate that equipment, which means
15 Optotraffic can't operate that equipment.
16 I don't think they're going to come in --
17 I don't think this Maryland corporation
18 is going to come in and run this speeding
19 meter on their own.

20 MS. VIZEDOM: No. The only
21 issue is the paperwork flow which has
22 stopped.

23 THE COURT: It has to stop.

24 MS. VIZEDOM: I understand that.
25 But once it goes to Optotraffic, then

1 ruled that they're illegal and
2 unconstitutional, so I think the Court
3 does need that.

4 Secondly, I'm not so sure that the
5 defendant, the Village of Elmwood, has
6 not waived their right to file this
7 motion in this court as they filed a
8 similar motion in the court of appeals.
9 That's something that the Court will have
10 to decide.

11 Again, Judge, all we're asking for
12 is the Court to expound upon its ruling
13 of last week.

14 THE COURT: Okay. I think I made
15 it pretty clear. It's a pretty simple
16 decision, actually. I started out, just
17 going over the facts, July 10, 2012, the
18 village of Elmwood passes an ordinance,
19 Ordinance 9-12, and then they added
20 Section 77 with it and they implemented
21 this Automated Speed Enforcement Program,
22 which we're talking about.

23 And in the decision, I thought I
24 made it pretty clear, it's very simple,
25 that if I grant an injunction, it